



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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NOV 24 2014

OFFICE OF
COMPLIANCE AND ENFORCEMENT

Reply To: OCE-133

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Roger Healy
Chief Engineer
Alaska Department of Transportation and Public Facilities
Division of Design and Engineering Services
3132 Channel Drive
P.O. Box 112500
Juneau, Alaska 99811-2500

Re: United States of America v. State of Alaska, Department of Transportation and Public Facilities
Consent Decree, Civil Action No. 3:10-cv-00115-JWS
Demand for Payment of Stipulated Penalties

Dear Mr. Healy:

I am writing to follow-up on the February 26, 2014 meeting between the State of Alaska and the United States regarding the Demand for Payment of Stipulated Penalties that the U.S. Environmental Protection Agency (EPA) issued to the State of Alaska Department of Transportation and Public Facilities (ADOT) on November 27, 2013, for violations of the United States of America v. State of Alaska, Department of Transportation and Public Facilities Consent Decree (Consent Decree). At our February meeting, ADOT asked EPA to consider two issues. First, ADOT asked EPA to re-evaluate some of the penalties included within EPA's Demand for Payment, and requested that EPA review documentation disputing the alleged violations. Second, ADOT asked that it be able to reinvest the penalties into improvements in ADOT's stormwater program instead of paying the penalty to the United States Treasury, similar to a Supplemental Environmental Project (SEP), as described in EPA's Final Supplemental Environmental Projects Policy issued in 1998. ADOT believed that under such a plan the entirety of the funding would be invested in improvements that went above and beyond ADOT's existing obligations under the Clean Water Act and the Consent Decree. The United States' response to both issues is below.

First, EPA agrees to correct the Demand for Payment of Stipulated Penalty from \$445,000 to \$261,000. EPA's decision is based on the following evidence provided by ADOT to EPA on March 21, 2014:

- An Excel spreadsheet of all ADOT's violations from 2010-2013, with each violation individually annotated with whether ADOT agreed to the stipulated penalty. Where ADOT rejected a penalty, it included a brief explanation as to why ADOT believed a stipulated penalty was not appropriate.

- A comparison between the number of violations for combined years 2010-2012, as calculated by EPA and ADOT. The comparison separated the stipulated penalties by the relevant paragraphs of the Consent Decree.
- ADOT's own calculation of stipulated penalties for the years 2010-2012, listed by year.

ADOT accepted that \$261,000 of stipulated penalties were properly assessed. EPA reviewed the submitted information, and had case-by-case discussions with ADOT to understand the differences. As a result of this information, the United States agrees with ADOT about the amount of stipulated penalties due. Therefore, with this letter, EPA is formally demanding that ADOT pay \$261,000 for stipulated penalties accrued under the Consent Decree through December 31, 2012. This Demand is a correction to and supercedes the Demand for Payment of Stipulated Penalties that was previously issued on November 27, 2013.

ADOT addressed the stipulated penalties which accrued in calendar year 2013 during those same discussions, and concluded an additional \$88,500 of stipulated penalties accrued in 2013. EPA agreed with that determination. As a result, EPA is formally demanding that ADOT pay \$88,500 for the additional stipulated penalties which accrued through December 31, 2013. In total, EPA is demanding \$349,500 for stipulated penalties which accrued between the effective date of the Consent Decree through December 31, 2013.

The second issue raised by ADOT is whether ADOT can reinvest the penalty into improvements into ADOT's stormwater program instead of paying the penalty to the United States Treasury. ADOT stated that under such a plan the entirety of the funding would be invested in improvements that went above and beyond ADOT's existing obligations under the Clean Water Act and the Consent Decree. At our meeting, the United States replied that it would look into whether that was an option which could be considered, but cautioned that laws such as Miscellaneous Receipts Act (31 U.S.C. § 3302) and the Federal Claims Collection Act (31 U.S.C. § 3711) might require that payment of the stipulated penalties go to the United States Treasury.

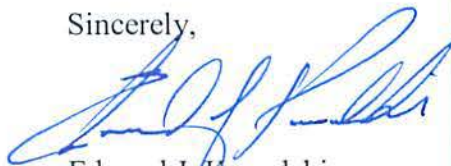
Our review has concluded that claims for stipulated penalties for violations of consent decrees may not be mitigated by the use of SEPs. *See*, EPA's Final Supplemental Environmental Projects Policy issued in 1998. Stipulated penalties owed under a consent decree are a sum certain dollar amount for the identified violations. Money owed to the United States, under the Miscellaneous Receipts Act, must go to the Treasury.

As stated above, EPA is formally demanding that ADOT pay \$349,500 for stipulated penalties accrued under the Consent Decree through December 31, 2013. Please be reminded that pursuant to Paragraph 52 and 57 of the Consent Decree, all penalties owed to the United States under Section X (Stipulated Penalties) shall be due and payable within thirty days of the appropriation addressed in Section VII (Obligation Subject to Appropriation), unless ADOT invokes the procedures under Section XI (Dispute Resolution). If ADOT fails to pay stipulated penalties when due, ADOT shall pay interest accrued at the rate established by the Secretary of the Treasury under 28 U.S.C. § 1961 beginning upon the day the stipulated penalties were due.

A review of information received, such as the written Endangerment Reports, shows that ADOT did not achieve its agreed-upon obligations under the Consent Decree in 2014. We would like to remind ADOT that stipulated penalties will continue to accrue until termination of the requirements of Section III (Compliance Program) of Consent Decree, and EPA will not consent to termination of those requirements prior to ADOT coming into compliance with its obligations under the Consent Decree.

Should you have any questions regarding this matter, you may reach me at (206) 553-6695, or have your counsel contact Chris Bellovary, Assistant Regional Counsel, at (206) 553-2723. Thank you.

Sincerely,



Edward J. Kowalski
Director

cc: Michael Geraghty
Alaska Department of Law

Annei Goldsmith
Alaska Department of Law

Kathryn Macdonald
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